



Comptroller General
of the United States
Washington, D.C. 20548

110038

Decision

Matter of: Anacomp, Inc.

File: B-256788

Date: July 27, 1994

Frederic G. Antoun, Jr., Esq., for the protester.
John R. Payne, Esq., Alton E. Woods, Esq., and
Sherry Kinland Kaswell, Esq., Department of the Interior,
for the agency.
M. Penny Ahearn, Esq., David A. Ashen, Esq., and
John M. Melody, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Agency properly rejected bid as nonresponsive where the bidder failed to acknowledge amendment which changed the legal relationship between the parties by imposing an obligation on the contractor not contained in the original solicitation, thus rendering the amendment material; absent acknowledgment of the amendment, the bidder would not be required to furnish the services in accordance with the amended specification requirements.

DECISION

Anacomp, Inc. protests the rejection of its low bid and the subsequent award of a contract to NCR Information Imaging Systems under invitation for bids (IFB) No. 1425-4-SI-70-00560, issued by the Department of the Interior for microfiche services, including pickup, creation, duplication, mailing, and/or delivery of microfiche. Anacomp's bid was rejected as nonresponsive because it failed to acknowledge an amendment to the IFB prior to bid opening. Anacomp contends that its failure to acknowledge the amendment should be waived as a minor informality.

We deny the protest.

The agency issued the solicitation on December 20, 1993, with bid opening scheduled for January 20, 1994. One amendment, No. 0001, was issued on January 11, 1994. The amendment incorporated answers to questions from prospective offerors and included revised pages to be substituted for existing solicitation pages.

One amendment revision concerned solicitation section C-5, "Pickup of Computer Tapes/Cartridges," which required pickup of government-furnished microfiche tapes at two locations by 9 a.m. on Monday, Wednesday, and Friday, but not on federal holidays. A prospective offeror questioned this requirement by asking, "[w]hen a holiday falls on Monday, Wednesday or Friday will that pickup day be skipped or rescheduled to either Tuesday or Thursday?" In response, the amendment revised section C-5 to add that, "[w]hen a federal holiday is on a Monday, Wednesday, or Friday, the microfiche tapes shall be picked up the next business day."

Anacomp, the low bidder, failed to acknowledge the amendment prior to bid opening. The contracting officer determined that the amendment included material changes to the solicitation, including the above-described change regarding pickup of tapes, and as a result determined that Anacomp's bid was nonresponsive. After Interior denied its agency-level protest, Anacomp filed this protest with our Office.

Anacomp argues that its failure to acknowledge the amendment did not render its bid nonresponsive because the amendment did not materially affect solicitation requirements concerning quantity, quality, delivery, or price. With respect to the amendment provision concerning pickup on the next business day after federal holidays falling on the regularly scheduled Monday, Wednesday, or Friday pickup days, the protester contends that because only 3 of the 85 contract pickup days are holidays, amounting to only 3.5 percent of the total number of pickup days, the amendment would not have a material effect on contract price.

Interior disagrees and maintains that the percentage increase in the number of pickup days under the amended solicitation was at least 4.5 percent. According to the agency this would have a major effect on the overall contract. Moreover, the agency contends that the amendment was material because it increased the contract obligations; without acknowledgment of the amendment, the agency could not require a contractor to perform the increased work necessary to meet its requirements.

A bidder's failure to acknowledge a material amendment to an IFB renders the bid nonresponsive, since absent such an acknowledgment the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. Firetech Automatic Sprinklers, Inc., B-248452, Aug. 12, 1992, 92-2 CPD ¶ 100. Even where an amendment may not have a clear effect on price, quantity, or quality, it still is considered material where it changes the legal relationship between the parties, such by increasing or changing the contractor's obligation

or responsibilities, in some material manner. Id. The materiality of an amendment which imposes new legal obligations on the contractor is not diminished by the fact that the amendment may have little or no effect on the bid price or the work to be performed. Id.

Here, nothing in the solicitation as originally issued required the contractor to reschedule a pickup to the next business day when a federal holiday fell on a Monday, Wednesday, or Friday; there thus was no express requirement that the contractor make tape pickups on those days. As a result of the amendment, however, when a federal holiday is on a Monday, Wednesday, or Friday, the contractor is required to make a tape pickup on the next business day. Since the amendment imposed this new obligation on the contractor, and since this additional obligation is obviously of importance to the agency for having its needs satisfied, the amendment was material, regardless of its effect on bid prices. Universal Parking Corp., 69 Comp. Gen. 31 (1989), 89-2 CPD ¶ 367. Consequently, Anacomp's failure to acknowledge the amendment could not be waived as a minor informality and the agency properly rejected the firm's bid as nonresponsive. Id.

Because we conclude that the amendment was material based on the increase in required tape pickup days, it is not necessary to consider the materiality of the remaining aspects of the amendment.

The protest is denied.

/s/ James A. Spangenberg
for Robert P. Murphy
Acting General Counsel

¹Although the protester suggests that under the "special pickup" provision of the solicitation the agency could require any additional pickups necessary when a regularly scheduled pickup falls on a federal holiday, we note that special pickups were in addition to the regularly scheduled pickups and unlike them had to be specifically requested in special circumstances not later than 3 p.m. on the previous day.